

**TENNESSEE REAL ESTATE COMMISSION MINUTES**  
**July 9-10, 2008**

The Tennessee Real Estate Commission convened on July 9, 2008, at 9:12 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner David Flitcroft, Commissioner Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

The first order of business was the election of the Chairman and Vice-Chairman of the Tennessee Real Estate Commission. Chairman Haynes turned the floor over to Ms. Maxwell in order to hold the election of the Chairman. Ms. Maxwell opened the floor to nominations. **Commissioner Flitcroft nominated Chairman Charles Haynes for Chairman. Commissioner Alexander made a motion to re-elect Chairman Charles Haynes as Chairman by acclamation; unanimous vote; motion carried. Chairman Haynes opened the floor to nominations for Vice-Chairman. Commissioner Alexander made a motion to nominate William "Bear" Stephenson for Vice-Chairman; seconded by Commissioner Northern; Commissioner Alexander made a motion to re-elect William "Bear" Stephenson as Vice-Chairman by acclamation; unanimous vote; motion carried.**

The next order of business was the adoption of the agenda (**Exhibit 1**) for the July 2008 Commission meeting. **Vice-Chairman Stephenson made a motion to adopt the July 2008 agenda; seconded by Commissioner Tate; Commissioner Flitcroft made a friendly amendment to include a discussion of an issue involving Commissioner Gary Cunningham; Vice-Chairman accepted Commissioner Flitcroft's friendly amendment; Chairman Haynes made a friendly amendment to add a personnel review for Ms. Eve Maxwell to the agenda and to have Commissioner Grover Collins replace Commissioner Gary Cunningham as the Middle Tennessee member of that sub-committee; Vice-Chairman Stephenson accepted Chairman Haynes friendly amendment; unanimous vote; motion carried.**

The next order of business was the approval of the minutes from the June 2008 meeting (**Exhibit 2**). **Commissioner Alexander made a motion to approve the June 2008 minutes; seconded by Commissioner Tate; unanimous vote; motion carried.**

Chairman Haynes asked Ms. Maxwell to order a plaque for outgoing Commissioner Gary Cunningham and to write an article for the next TREC newsletter outlining his accomplishments as a Commission member.

## **EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

Ms. Maxwell presented the following information to the Commission for review:

- **Complaint Statistics Report (Exhibit 3)** – TREC has a total of **442** open complaints. Two of the 442 open complaints were staff generated Agreed Citations and 20 are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 6 new complaints since the June meeting. There are 435 complaints in the legal department and 7 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2007-2008 is 263. Total Civil Penalties paid in May were \$14,403.00.
- **Licensing Statistics** – Ms. Maxwell presented statistics (**Exhibit 4**) to the Commission on real estate licenses approved in 2008 and the number of licensees as of June 30, 2008. As of June 30, 2008, there were 33,656 active licensees, 2,111 inactive licensees and 9,838 retired licensees. There were 4,781 active firms and 293 retired firms. There were 357 new applications approved in June 2008.
- **October 1-2, 2008 meeting in Knoxville** – Ms. Maxwell discussed briefly with the Commission the upcoming Commission meeting in Knoxville.

## **EDUCATION REPORT, DR. KATHY RIGGS, EDUCATION DIRECTOR**

Chairman Haynes left the meeting at 10:10 a.m. and Vice-Chairman Stephenson stood in as Chairman.

- Dr. Riggs presented *Courses for Commission Evaluation (Exhibit 5)*. **Commissioner Flitcroft made a motion to approve the *Courses Presented for Commission Evaluation*; seconded by Commissioner Joh; unanimous vote; motion carried.**
- Dr. Riggs presented a *Course Deferred from the June 2008 meeting*, "What Every Licensee Should Know About the Home Inspection Process" taught by John Watkins. **Commissioner Joh made a motion to approve; seconded by Commissioner Tate; unanimous vote; motion carried.**
- Dr. Riggs presented a *Course Requiring Discussion* "Investment in Excellence" taught by Don Klein of the Greater Nashville Area Association of Realtors. **Commissioner Joh made a motion to not approve; seconded by Commissioner Northern; unanimous vote; motion carried.**
- Dr. Riggs presented the course, "The DNA of a Sales Agent" taught by Dwight Richardson. **Commissioner Joh made a motion to not approve; seconded by Commissioner Collins; unanimous vote; motion carried.**

Chairman Haynes re-entered the meeting at 10:20 a.m. Vice-Chairman Stephenson continued to act as Chairman until after the lunch recess.

- Dr. Riggs presented a letter from Columbia Institute asking approval for their courses "Scope of Work & Appraiser Due Diligence", "FHA, the URAR and 1025",

- "National USPAP Update Course" and "Survey of the Cost Approach". All four courses were not approved in November 2007. **Commissioner Alexander made a motion to approve the courses; seconded by Chairman Haynes; opened to discussion; vote: 6 yes, 2 no; motion carried.**
- Dr. Riggs presented a letter from Nashville School of Real Estate requesting that consideration be given to temporarily allow the number of daytime class hours allowable to be extended to 7.5 hours. This would allow for the daytime classes to be completed in a four day week rather than requiring the additional 5<sup>th</sup> day, providing a tangible savings to those commuting from any distance at all. T.C.A. 1260-5-.17 states "No course offered for eligibility for the affiliate broker examination shall be held for more than six (6) hours in any twenty-four (24) hour period. There must be at least eight (8) hours of intermission between any two (2) sessions of a course". Dr. Riggs and Ms. Wiseman advised the Commission that this kind of change would necessitate a rule change. The request was opened to discussion. J.A. Bucy, Director of Governmental Affairs of TAR addressed the potential change. **Chairman Haynes made a motion to defer the discussion until the later in the meeting during the section of the agenda set aside for proposed rule and statutory changes; seconded by Commissioner Joh; unanimous vote; motion carried.**

### **LICENSEE/APPLICANT REQUESTS**

**Lorrie McGovern, licensee, 307396**, appeared with her Principal Broker Bonnie Henderson to request an exemption to T.C.A. 62-13-303(c)(3)(A) which reads "If the applicant [for a broker's license] was licensed as an affiliate broker after May 12, 1988, satisfactory proof that the applicant has held an active real estate license for a least thirty-six (36) months, or, if the applicant holds a baccalaureate degree with a major in real estate, for at least twenty-four (24) months". **Commissioner Joh made a motion to deny Ms. McGovern's request; seconded by Commissioner Alexander; unanimous vote; motion carried.**

There was a brief discussion regarding the upcoming ARELLO annual conference in October 2008 in Indianapolis, Indiana.

**Jay "Brad" Dunn, licensee, 255096**, appeared with his Principal Broker, Jim Dunn to request a waiver of the 50 mile rule. **Commissioner Collins made a motion to approve; seconded by Commissioner Northern; opened to discussion; Vote: 7 yes, 0 no; Commissioner Flitcroft abstained; motion carried.**

Vice-Chairman Stephenson recessed the meeting for lunch at 11:20 a.m. and the meeting reconvened at 1:10 p.m.

## **DISCUSSION OF POTENTIAL RULE AND/OR STATUTORY CHANGES**

Discussions were held regarding the following statutes or rules:

- **Rule 1260-5-.17** - The rule states "No course offered for eligibility for the affiliate brokers examination shall be held for more than six (6) hours in any twenty-four (24) hour period. There must be at least eight (8) hours of intermission between any two (2) sessions of a course". Commissioner Joh suggested the rule be amended to state that no course offered for eligibility for the affiliate broker examination shall be held for more than eight (8) hours in any twenty-four hour period. She further suggested the sentence, "there must be at least eight (8) hours of intermission between any two (2) sessions of a course" be omitted. There was a consensus among the Commissioners that the change is acceptable.
- **T.C.A. 62-13-303(c)(3)(A)** – the statute reads "If the applicant [for a broker's license] was licensed as an affiliate broker after May 12, 1988, satisfactory proof that the applicant has held an active real estate license for a least thirty-six (36) months, or, if the applicant holds a baccalaureate degree with a major in real estate, for at least twenty-four (24) months". Ms. Wiseman suggested the Commission may wish to clarify what is meant by a "degree in real estate" since there are very few colleges and universities that offer a major in real estate. Commissioner Joh inquired as to whether there is a way to specify that a major in Business and Finance with special studies in Real Estate be deemed acceptable in lieu of a real estate degree. Ms. Wiseman explained it would require a legislative change to change the statute. However, she suggested a new rule could help define what is meant by a degree in real estate.
- **Rule 1260-2-.09** – There was a discussion concerning earnest money. It was decided a revised rule should be drafted that states in principle that the broker will file an interpleader action within 30 days from a written request for return of earnest money.

Mary Snyder and Greg Allen, licensees who attended the Commission meeting in order to obtain continuing education credits, made comments regarding the return of earnest money.

John Paul Moses, a licensee who attended the Commission meeting in order to obtain continuing education credits, addressed the Commission regarding an affiliate being recognized as his/her own company as they are independent contractors thereby allowing an affiliate to receive monies in their company name.

J.A. Bucy, Director of Governmental Affairs of TAR reported to the Commission on a 2006 National Association of Realtors study. Per that study, commercial agents who are members of NAR average 16 years of experience and 42% of all Realtors, including commercial agents, have five years or less of service.

Commissioner Collins made the following recommendations regarding rule and statutory changes. He suggested that Timeshare Salespersons be held to the same standards as affiliate brokers and brokers per the rules and regulations of TREC. He also wishes to consider approving education courses for only one year at a time instead of four years as per rule 1260-5-.16. He further suggested the implementation of a two year apprentice program for new licensees. J.A. Bucy, Director of Governmental Affairs of TAR, addressed the Commission regarding a potential apprentice program. There was some discussion of implementing a six month provisional license so as to not prohibit entry into the market. Furthermore, there was a suggestion of a limitation on how many apprentices a principal broker may supervise at one time.

Commissioner Northern addressed rule 1260-5-.12(3)(b) which states "an affiliate broker will not receive continuing education for courses completed prior to licensure, or during a licensure period." He suggested it be inclusive of brokers as well. Ms. Wiseman explained to the Commission that 1260-5-.12(3)(b) has been deleted from the manual due to a clerical error and 1260-5-.12(3)(c) has replaced it. 1260-5-.12(3)(b) now states "An affiliate broker will not receive continuing education credit for classroom hours completed prior to licensure, or during a prior license period."

Ms. Wiseman suggested that the wording of T.C.A. 62-13-313(e)(1) be changed from "Two (2) years from the date of commission of the alleged violation of 62-13-312, or the date that the complainant actually became aware of the violation;" to "Two (2) years from the date of commission of the alleged violation of 62-13-312, or the date that the complainant knew or should have known of the violation." The Commission had no objections to the change.

Ms. Maxwell discussed the Standard Operating Procedure for complaint processing. She asked if the Commission had any input on whether certain types of complaints can be handled administratively. Specifically, she referred to complaints where TREC has no jurisdiction, no basis for a complaint exists or the complaint is a civil matter. Chairman Haynes suggested these complaints be addressed internally but a summary report should be given to the Commission monthly during the Legal Report. The Commission could then choose to approve or not approve the decisions from the report. There was also a brief discussion about how anonymous complaints may be handled in the future. Commissioner Northern suggested anonymous complaints be handled by Consent Agenda at the monthly TREC meeting. The discussion returned to complaints with no jurisdiction or no violation of TREC's rules and statutes. **Commissioner Collins made a motion to have staff not present any complaint that does not violate TREC's rules and statutes; seconded by Commissioner Joh; unanimous vote; motion carried.**

## **COMMISSIONER REPORTS**

Commissioner Joh, Commissioner Flitcroft, Commissioner Tate, Commissioner Alexander, Chairman Haynes, Vice-Chairman Stephenson, Commissioner Collins and Commissioner Northern gave reports on issues of concern to them and the Commission.

Ms. Maxwell's performance review was held by a sub-committee consisting of Commissioner Collins, Commissioner Flitcroft and Commissioner Alexander following the meeting.

Chairman Haynes recessed the meeting Wednesday, July 9, 2008 at 3:29 p.m.

## **TENNESSEE REAL ESTATE COMMISSION Thursday, July 10, 2008**

The Tennessee Real Estate Commission reconvened on July 10, 2008 at 9:19 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee.

**The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner David Flitcroft, Commissioner Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

### **Legal Report, Kathryn Wiseman, Staff Attorney (Exhibit 10)**

1) **2006031361 &**

2) **2006031362 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.**

3) **2006034251 – Commissioner Joh made a motion to dismiss; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

4) **2006035361 &**

5) **2006035362 – Commissioner Flitcroft made a motion to close with a Letter of Warning and within six months the respondent and their principal broker must attend a two day TREC meeting; seconded by Commissioner Alexander; Commissioner Joh made a motion to amend to not require the principal broker to attend the two day TREC meeting; motion to amend failed for lack of a second; vote on original motion: 6 yes, 1 no; motion carried.**

6) **2006037641 &**

7) **2006037642 – Commissioner Flitcroft made a motion to close the complaint with a Letter of Warning regarding record keeping and within six months the affiliate broker must attend a two day TREC meeting; seconded by Commissioner Alexander for discussion; opened to discussion; Commissioner Alexander made an amendment to the motion to require the**

affiliate broker's principal broker to attend a two day TREC meeting; seconded by Commissioner Flitcroft; vote on amendment: 5 yes, 3 no; opened to discussion; Commissioner Collins made a motion to defer; seconded by Commissioner Joh; unanimous vote; motion carried. Commissioner Joh suggested an auditor be sent to the firm to review record keeping practices.

8) 2006040661 - Commissioner Northern made a motion to dismiss; seconded by Commissioner Tate; opened to discussion; unanimous vote; motion carried.

9) 2006045101 – Commissioner Joh made a motion dismiss; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.

10) 2007052971 – Commissioner Alexander made a motion to require the principal broker of the firm to attend a two day Commission meeting as well as an eight (8) hour contract writing class. Furthermore, a complaint should be opened against the affiliate broker and eight (8) hours of contract writing be authorized; seconded by Commissioner Flitcroft; opened to discussion; motion carried.

11) 2007054661 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Northern; opened to discussion; unanimous vote; motion carried.

12) 2007057211 &

13) 2007057261 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Joh; opened to discussion; unanimous vote; motion carried.

14) 2007057321 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.

Commissioner Flitcroft made a motion to have staff present all complaints to the Commission even if there is no violation of the TREC rules and statutes; seconded by Vice-Chairman Stephenson; roll call vote: 2 yes, 6 no; motion failed. Commissioner Alexander made a motion that any complaint that is currently open or is filed, other than one where there is no violation of the Broker's Act, should be presented to the Commission and if there is no violation of the Broker's Act, those complaints will be heard by Consent Agenda at the monthly meeting; seconded by Commissioner Collins; opened to discussion; unanimous vote; motion carried.

15) 2007057811 &

16) 2007057812 &

17) 2007057813 &

18) 2007057814 – Commissioner Tate made a motion to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.

**19) 2007059991 &**

**20) 2007059992 – Vice-Chairman Stephenson made a motion to issue a consent order with a civil penalty of \$1,000.00 each to the principal broker and the affiliate broker. Additionally both the principal broker and affiliate broker must attend a two day TREC meeting within six (6) months; seconded by Commissioner Flitcroft; Commissioner Northern made an amendment to reduce the penalty for the principal broker to \$500.00; seconded by Commissioner Collins; amendment passed unanimously; motion as amended passed unanimously.**

Ms. Wiseman reviewed with the Commission the Consent Order Log and the Legal File Review.

### **Comments from Attendees**

Chairman Haynes called for comments from the attendees.

Licensees who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

Chairman Haynes adjourned the meeting Thursday, July 10, 2008 at 11:21 a.m.